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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,476	03/15/2004	Andrew S. Van Luchene	03-030	1519
22927	7590	08/05/2009		
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STAMFORD, CT 06905				
EXAMINER				
HAIDER, FAWAAD				
ART UNIT		PAPER NUMBER		
3627				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,476

Applicant(s)

VAN LUCHENE ET AL.

Examiner

FAWAAD HAIDER

Art Unit

3627

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-19 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-19 and 21-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-10, 13-14, 18-19, and 21-25 are rejected under 35 U.S.C. 102(b) as being unpatentable over Battistini et al (5,907,275) in view of Official Notice.

Re Claim 2: Battistini discloses comprising: determining that a customer is at an ordering station (see 38 in Figure 2, col.3, lines 61-65, col.6, lines 30-38, col.7, lines 20-26); receiving an order of the customer via the ordering station (see Abstract, col.1, lines 6-8, col.2, lines 21-22, Figures 1-6); outputting, by an offer server in communication with the ordering station, a first offer via the ordering station (see col.4, lines 10-13, col.4, lines 53-60, col.6, lines 45-46, col.7, lines 25-26, col.8, lines 23-28). The examiner takes Official Notice that it would have been obvious to one of ordinary skill in the art at the time of the invention to determine that the customer is at a second

station and output a second offer at a second station as it merely repeating the same steps above.

Re Claim 3: Battistini discloses in which determining that a customer is at an ordering station comprises: detecting, via a sensor, a vehicle (see Figure 2).

Re Claim 4: Battistini discloses in which the second offer is the same as the first offer (see col.4, lines 51-54).

Re Claim 5: Battistini discloses in which the second offer is different than the first offer (see col.6, lines 42-45).

Re Claim 6: Battistini discloses further comprising: terminating output of the first offer before the first offer is completed (see col.2, lines 38-41).

Re Claims 7, 24, 25: Battistini discloses further comprising: receiving an indication that the customer is not at the ordering station; and automatically terminating output of the first offer in response to receiving the indication that the customer is not at the ordering station (see Figure 2).

Re Claim 8: Battistini discloses further comprising: determining the first offer based on the order (see col.2, lines 7-11).

Re Claim 9: Battistini discloses in which determining the first offer comprises: determining a subtotal of the order; and determining the first offer based on the subtotal (see col.1, line 25, Figure 4).

Re Claim 10: Battistini discloses in which determining the first offer comprises: determining at least one item in the order; and determining the first offer based on the at least one item (see col.7, lines 27-31).

Re Claim 13: Battistini discloses in which the second station is a pick-up station (see Figure 2).

Re Claim 14: Battistini discloses in which the second station is a payment station (see Figure 2).

Re Claim 18: Battistini discloses further comprising: determining whether the first offer was completed; and determining the second offer based on whether the first offer was completed (see col.7, lines 4-6).

Re Claim 19: Battistini discloses in which the ordering station comprises a menu board (see Figures 1 and 2).

Re Claims 21, 23: Battistini discloses in which determining that the customer is at the ordering station comprises: sensing that the customer is at a digital menu board of a drive-through (see Figure 2).

Re Claim 22: discloses further comprising: outputting an automated greeting using the ordering station.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-12, 15-17, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Battistini et al (5,907,275) in view of Walker et al (6,374,240).

Battistini fails to disclose the following limitations:

Re Claims 11, 26: Walker discloses in which the first offer comprises an upsell offer (see col.13, line 1).

Re Claim 12: Walker discloses in which the first offer comprises an offer for an item in exchange for an amount of change due (see col.13, line 1).

Re Claim 15: Walker discloses further comprising: determining the second offer based on the first offer (see Figures 12, 18, 19).

Re Claim 16: Walker discloses further comprising: receiving a response to the first offer; and determining the second offer based on the response to the first offer (see Figures 12, 18, 19).

Re Claim 17: Walker discloses further comprising: determining whether the first offer was accepted; and determining the second offer based on whether the first offer was accepted (see Figures 12, 18, 19).

Re Claim 27: Walker discloses further comprising: determining that the customer left the ordering station before output of the first upsell offer was completed; and in which outputting the second offer at the second station comprises: outputting a second upsell offer to the customer at the second station (see col.13, line 1 and Figure 1).

From the teaching of Walker, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Battistini's invention with Walker's technique in order that "drive-through customers may be provided with customized benefits (see Walker col.1, lines 43-44)."

Response to Arguments

5. Applicant's arguments filed 5/11/09 have been fully considered but they are not persuasive. Applicant's arguments, with respect to the 101 rejection have been fully considered and are persuasive. The 101 rejection of 2-19 and 21-27 has been withdrawn. The arguments with respect to Battistini not determining that the customer is at a second offer station, or outputting a second offer at a second station are moot in view of the new grounds of rejection. For claim 2, the applicant argues that Battistini does not disclose determining that a customer is at any type of station. First, Battistini discloses a motion detector 36 in Figure 2. Then in col.6, lines 30-38, Battistini discusses a vehicle detector 36 which indicates the presence of a customer. Next, the applicant argues that Battistini does not describe receiving an order from a customer. From the figures, one can clearly observe that this is a fast-food restaurant ordering system. In the Abstract, Battistini discusses an attendant receiving orders in a restaurant. In Figure 5, there is a more detailed description of the order receiving station as well.

For claim 6, the applicant argues that Battistini does not teach terminating output of an offer before the offer is completed. In column 2, lines 38-41, Battistini discloses

that the total amount owed is displayed before the customer proceeds to the attendant window, where the attendants have the power to do so with the use of text. For claim 7, the applicant argues that receiving an indication that a customer is not at an ordering station or has moved away from an ordering station. The motion detector 36 in Figure 2 would inform the attendant if the customer is at the ordering station or not.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Ryan Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew S Gart/
Supervisory Patent Examiner, Art Unit 3687

/Fawaad Haider/
Examiner
Art Unit 3627

FIH